

FEB 12 8 25 AM '97 Federal Communications Commission

DA 97-217

DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Alberton, Montana)

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MM Docket No. 97-51
RM-8983

NOTICE OF PROPOSED RULE MAKING

Adopted: January 31, 1997

Released: February 7, 1997

Comment Date: March 31, 1997

Reply Date: April 15, 1997

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Vixon Valley Broadcasting ("Vixon"), proposing the allotment of Channel 284A to Alberton, Montana, as that community's first local FM broadcast service. Vixon indicated that it would apply for Channel 284A at Alberton.

2. In support of its request, Vixon has provided an engineering statement that indicates a channel can be allotted to Alberton. According to Vixon, Alberton, Montana, is located in west central Montana in Mineral County. Vixon points out that Channel 284A would provide a first local broadcast facility to the community and surrounding area and that the closest FM allotment to Alberton is located in Missoula, Montana, which is 38 kilometers from Alberton. Vixon states that allotment of an FM channel at Alberton would provide not only an outlet for local expression but would also provide the Alberton area with information during emergency conditions caused by severe weather.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See e.g., Oak Grove, FL, 5 FCC Rcd 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685 (1990).

We do recognize that Alberton is incorporated and listed in the 1990 Census and that it has a post office, meeting the basic criteria for community status. However, we may find that a population grouping of 354 people does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations. See e.g., Searles Valley, CA, 3 FCC Rcd 5221 (1988); see also Naples, FL, 41 RR 2d 1549 (1977). In past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. Therefore, Vixon is requested to present the Commission with specific information to demonstrate that Alberton has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. Vixon should show the organizations, civic groups, etc., have a nexus with the community in question.

4. A staff engineering analysis indicates that Channel 284A can be allotted to Alberton consistent with the minimum distance separation requirements of the Commission's Rules without a site restriction.¹ Although the proposal for Channel 284A at Alberton complies with the Commission's spacing requirements, we note that both the community of Alberton and the allotment site for Channel 284A are located in an area of several national forests and state parks. Therefore, Vixon is requested to provide information showing that an actual transmitter site is available that provides city grade coverage to Alberton. Since the community of Alberton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence will be requested for this allotment.

5. In view of the fact that the proposed allotment would provide a first local service to Alberton, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 284A to Alberton, in the event it is ultimately found to qualify as a community for allotment purposes. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Alberton, as follows:

Community	Channel No.	
	Present	Proposed
Alberton, Montana	-----	284A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

¹ The coordinates for Channel 284A at Alberton are 47-00-06 and 114-28-21.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

7. Interested parties may file comments on or before **March 31, 1997**, and reply comments on or before **April 15, 1997**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Victor A. Michael, Jr., President,
Vixon Valley Broadcasting
c/o Magic City Media
1912 Capitol Avenue, Suite 300
Cheyenne, Wyoming 82001

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.